

**TAX PHASE-IN AGREEMENT BETWEEN  
VISTANA, LTD. AND THE CITY OF SAN ANTONIO**

**1. PARTIES**

THIS AGREEMENT (the "Agreement") is entered into on this 29<sup>th</sup> day of September 2006, by and between VISTANA, LTD. (hereinafter referred to as "DEVELOPER"), a Texas limited partnership, as owner of the Property (as defined below), and the CITY OF SAN ANTONIO, a municipal corporation, (hereinafter referred to as the "CITY").

**2. AUTHORIZATION AND FINDINGS**

A. This Agreement is entered into pursuant to the following authorities:

1. The Texas Property Redevelopment and Tax Abatement Act of 1987, V.A.T.S. Tax Code, Chapter 312, as amended;

2. CITY COUNCIL RESOLUTION No. 89-07-12, dated the 15th day of February 1989 and Ordinance No. 2006-06-15-0721 on June 15, 2006, together which established the Joint City-County of San Antonio Guidelines and Criteria for Tax Phase-In and Reinvestment Zones, (hereinafter referred to as the "Guidelines and Criteria");

3. CITY COUNCIL ORDINANCE No. 94651, dated September 27, 2001, which authorized the submission of an application to, and authorizing acceptance from, the U.S. Department of Housing and Urban Development ("HUD") for Federal Empowerment Zone designation for San Antonio (approved by HUD on January 16, 2002), said designation being more particularly described in the map attached hereto and incorporated herein as Exhibit A, in which the subject property described in Article 3 is located; and

4. TX. GOVT. CD. §2303.109, which specifies that a Federal Empowerment Zone designation constitutes an Enterprise Zone designation without further qualification; and

5. TX. TAX CD. §312.2011, which specifies that an Enterprise Zone designation constitutes a Reinvestment Zone designation (the "Zone") without further qualification; and

6. CITY COUNCIL ORDINANCE NO. 2006-08-17-0917, dated August 17, 2006, which specifically approved this Agreement and authorized execution hereof.

B. The City Council, by its approval of this Agreement, hereby finds that the terms of this Agreement and the property subject to it generally meet the Guidelines and Criteria as adopted by the City Council. The City Council further finds that (a) the approval of this Agreement will not have any substantial long-term adverse effect on the provision of CITY services or the CITY'S tax base; and (b) the planned use of the Property (defined below) inside the Zone by DEVELOPER for the uses contemplated herein will not constitute a hazard to public safety, health or morals.

### 3. PROPERTY

A. The taxable real property which is the subject of this Agreement is a 1.262 acre tract of land described as Lot 1, Block C, New City Block (N.C.B.) 175, Santa Rosa Lofts Subdivision, in the City of San Antonio, Bexar County, Texas, as described in Volume \_\_\_\_, Pages \_\_\_\_, of the Deed Records of Bexar County, Texas and more particularly described in Exhibit B, attached hereto and incorporated herein (the "Real Property"). DEVELOPER shall invest approximately THIRTY-EIGHT MILLION DOLLARS AND NO CENTS (\$38,000,000.00) in real property improvements and will construct, or cause to be constructed, on said real property a FOURTEEN (14) story mixed-use multi-family, market-rate rental housing complex consisting of approximately FIVE HUNDRED THOUSAND (500,000) square feet (the "Complex"). The Complex shall house TWO HUNDRED AND FORTY (240) residential units comprising approximately TWO HUNDRED AND THIRTY-FIVE THOUSAND (235,000) square-feet. An additional THIRTY THOUSAND (30,000) square feet of the complex shall be used for retail, office or similar commercial use. DEVELOPER will also construct and maintain an above-ground parking garage adjacent to the complex with approximately FOUR HUNDRED AND FIFTY (450) spaces for both public and private use. DEVELOPER shall also make streetscape improvements associated with the complex in coordination with the CITY and other interested parties. The Complex is projected to be substantially completed by June 1, 2008. DEVELOPER or a Related Organization (defined in Article 5, Paragraph I) is required to use the Property (as defined below) primarily for mixed-use, parking, and multi-family, market-rate rental housing (hereinafter collectively referred to as the "Required Use") during the Term of this Agreement. DEVELOPER shall be entitled to tax abatements authorized herein for the Real Property and Complex (the Real Property and Complex shall be referred to collectively as the "Property") above the Base Year Value (as defined in Article 6, Paragraph A) if DEVELOPER or a Related Organization undertakes the Required Use in accordance with the terms of this Agreement. DEVELOPER understands and accepts that there shall be no abatement of taxes for the land, personal property, inventory or supplies.

B. DEVELOPER will establish one or more "Improvements Only" tax accounts representing the residential, retail and parking functions of the Complex, as well as a personal property tax account, with the Bexar Appraisal District regarding the Property and provide these tax account numbers to the CITY.

C. The CITY hereby acknowledges that DEVELOPER intends to subject the Property to a condominium regime (the "Condominium Project") in accordance with the provisions of the Texas Uniform Condominium Act and a Declaration of Condominium to be filed in the Official Public Records of Real Property of Bexar County, Texas (the "Condo Declaration"). The Condominium Project shall during the term of this Agreement consist of (i) one retail unit (the "Retail Unit") which shall be used for retail, office or similar commercial use; (ii) one parking unit (the "Parking Unit") which shall be used for public and private parking, and (iii) one residential unit (the "Residential Unit" and together with the Retail Unit and Parking Unit, the "Units") which shall be used for multi-family, market-rate rental housing during the Term of this Agreement. Following the Term of this Agreement, DEVELOPER shall have the right to subdivide and convert the Residential Unit from market-rate rental housing to two or more

condominium units as long as the use of such subdivided condominium units remain residential in nature during the Extended Term (as defined in Article 7, Paragraph H below).

#### **4. DEVELOPER'S REPRESENTATIONS**

A. DEVELOPER represents that they have no knowledge that any interest in the Property is presently owned, held or leased by a member of the San Antonio City Council, Zoning Commission, Planning Commission, the City's Economic Development Department, or any other City official or employee. DEVELOPER further represents that they shall not knowingly sell, lease or otherwise convey such an interest to a member of the San Antonio City Council, the Zoning Commission, the Planning Commission, the City's Economic Development Department or any other City official or employee, as long as this Agreement remains in effect.

#### **5. TERMS OF THE AGREEMENT**

A. Obligations of DEVELOPER. For DEVELOPER to receive the tax abatement authorized herein: (1) DEVELOPER or a Related Organization shall own, hold an interest in or otherwise control the Property and DEVELOPER shall invest a minimum of THIRTY-EIGHT MILLION DOLLARS AND NO CENTS (\$38,000,000.00) in real property improvements for the Property described in Article 3, Paragraph A before June 1, 2008; (2) DEVELOPER shall offer health care benefits to all of its non-temporary, full-time employees working at the Complex during the Term; (3) DEVELOPER shall maintain use of the Complex for its Required Use during the Term; (4) DEVELOPER shall construct and maintain above-ground parking spaces in an amount not less than FOUR HUNDRED AND FORTY (440) parking spaces for both public and private use; (5) DEVELOPER shall incorporate streetscape improvements associated with the complex; and (6) DEVELOPER shall otherwise comply with the applicable terms of this Agreement.

B. Full-Time Employee. For the purposes of this Agreement, a full-time job shall be equivalent to two thousand eighty (2,080) straight-time paid hours in a fiscal year.

C. Employee Benefits. DEVELOPER covenants and agrees that it shall offer all of its non-temporary full-time employees at the Complex, and their dependents, access to affordable healthcare benefits under terms within the sole and exclusive discretion of DEVELOPER (it being the understanding that DEVELOPER shall not be required to pay the premiums for these employees). DEVELOPER covenants and agrees that, during each year of the Term of this Agreement, it will continue to offer all of its non-temporary full-time employees at the Complex, and their dependents, access to affordable healthcare benefits.

D. Compliance with Employment Regulation. DEVELOPER covenants and agrees that it shall comply with all applicable federal and state laws governing the employment relationship between employers and employees. A non-exclusive list of such laws is attached hereto as Exhibit "C" and incorporated herein.

E. Compliance with Required Use Regulation. DEVELOPER also covenants and agrees that it shall conduct its Required Use (as defined in Article 3, Paragraph A) at the Complex in accordance with all applicable federal, state and local laws.

F. Compliance with Construction Regulation. DEVELOPER shall cause the construction of the Complex in accordance with all applicable federal, state and local laws including, but not limited to, Texas Commission on Environmental Quality regulations, Bexar County and City of San Antonio laws, Building Codes and ordinances, Historic Preservation and Urban Design ordinances, flood, subdivision, building, electrical, plumbing, fire and life safety codes and regulations, current and as amended. Compliance with this section shall be evidenced by issuance of required permits and certificate of occupancy by the CITY. Nothing herein shall be construed to preclude DEVELOPER from utilizing all available rights within the City of San Antonio Code including, but not limited to, Nonconforming Rights, Development Preservation Rights and Vested Rights, as may be applicable.

G. Compliance with Asbestos/Hazardous Substance Regulation and Voluntary Measures. DEVELOPER shall comply with all applicable state and federal laws regarding the abatement, remediation, handling and disposal of asbestos and all hazardous substances that are encountered during site development. DEVELOPER shall also comply with all applicable CITY ordinances regarding nuisance and dust conditions during demolition, renovation and construction activities. DEVELOPER will undertake good faith efforts to control release of dust particulates during demolition, renovation and construction activities by: (1) wetting the surface during these activities; and (2) controlling/preventing resulting runoff from entering the San Antonio River or other watershed, all in compliance with generally accepted construction industry standards.

H. Construction Completion. DEVELOPER shall substantially complete construction of the real property improvements by June 1, 2008. Notwithstanding Paragraph 5A, DEVELOPER shall be entitled to such additional time to complete said construction as may be required due to any "Force Majeure" event, so long as DEVELOPER reasonably and diligently pursues said construction. For purposes of this Agreement, "Force Majeure" shall be as defined in Article 8 below. The CITY shall have the final determination, to be exercised reasonably and in good faith, as to whether matters of Force Majeure have occurred and the determination by the architect for DEVELOPER as to whether DEVELOPER is otherwise diligently pursuing construction shall be a rebuttable presumption. DEVELOPER shall notify the CITY of the completion of the real property improvements by sending a copy of the Certificate of Occupancy issued for the Complex to the address listed in Article 9 (Notice) within fourteen (14) business days of certificate issuance.

I. Authorized Use. Except as provided herein, DEVELOPER covenants and agrees that it shall use the Complex at the Property in compliance with its Required Use (as defined in Article 3, Paragraph A) during the Term of this Agreement. Without additional consent or approval by the City Council, a parent, subsidiary or affiliate organization of DEVELOPER or new entity created as a result of a merger, acquisition, or other corporate restructure or reorganization of DEVELOPER, or any component thereof, any tenant or licensee of DEVELOPER or any Permitted Assignee (as defined in Article 11) (hereinafter "Related Organization") may occupy and use the Property and the Complex for such Related Organization's normal use, so long as

such use is that of a mixed-use, multi-family, residential housing development similar or comparable to the Required Use of DEVELOPER at the Complex. To be eligible for tax abatements as provided in this Agreement, such Related Organization shall comply with all applicable terms of this Agreement. Except as authorized above, DEVELOPER covenants and agrees not to change the principal use of the Property during the Term of this Agreement and as to the Residential Unit only, extending through the Extended Term (as defined in Article 7, Paragraph H below) without prior approval by the City Council, as evidenced in a duly approved ordinance; provided however, that during the Extended Term, DEVELOPER shall have the right to subdivide and convert the Residential Unit from market-rate rental housing to two or more condominium units as long as the use of such subdivided condominium units remains residential in nature during the Extended Term.

J. Maintenance Obligations. DEVELOPER covenants and agrees that they shall maintain the Property and the Complex in good repair and condition during the Tax Phase-In Period, normal wear and tear and damage by fire or other casualty not caused as a result of the intentional act or misconduct of DEVELOPER excepted. Compliance with the maintenance obligations imposed herein shall be presumed if DEVELOPER follows its normal and customary maintenance procedures and schedules.

K. Inspections by the City. Upon five business days prior notice to DEVELOPER by the CITY, DEVELOPER covenants and agrees that they shall allow designated representatives of the CITY access to the Property and the Complex during normal business hours for inspection of the premises to determine if the terms and conditions of this Agreement are being met, except however that once completed, the CITY's right to inspect shall be limited to those areas of the Complex not occupied by tenants, unless permission is granted by the tenants. (This inspection is independent of CITY'S police powers to inspect for purposes of assuring compliance with applicable City Codes and Ordinances). The CITY's access to DEVELOPER's books and records will be limited to information needed to verify that DEVELOPER is and has been complying with the Required Use, and to verify provision of access of affordable healthcare benefits to the non-temporary full-time employees at the Complex. Any information that is not required by law to be made public shall be kept confidential by CITY. DEVELOPER shall not be required to disclose to the CITY any information that by law DEVELOPER is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, the CITY reserves the right to require DEVELOPER to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of DEVELOPER. To the extent that an inspection is conducted, CITY representatives may be accompanied by DEVELOPER representatives and such inspections shall be conducted in such a manner as to (a) not unreasonably interfere with the operation of the Property or the Complex; and (b) comply with DEVELOPER's reasonable security requirements.

L. Disclosure to Bexar Appraisal District. During the term of this Agreement, DEVELOPER covenants and agrees to furnish, as applicable, by April 30<sup>th</sup> of each year, the Chief Appraiser of Bexar Appraisal District with information outlined in Chapter 22, V.A.T.S. Tax Code, as amended, as may be necessary for the tax phase-in and for appraisal purposes.

M. Disclosure to CITY. DEVELOPER covenants and agrees that it shall provide the CITY's Director of Economic Development with a semi-annual certification from an officer of DEVELOPER attesting to any additional monetary investment, the number of new jobs created, as well as confirmation that DEVELOPER provided access to benefits to its non-temporary, full-time employees at the Complex. DEVELOPER shall also submit this information to the CITY upon request, as deemed necessary at the sole discretion of the CITY, during the term of this Agreement, but not more than two times a year. The information provided shall be on the forms set forth in, or substantially similar to the forms set forth in, Exhibit "D" (attached hereto and incorporated herein), as amended.

N. Local Employment Goal. DEVELOPER covenants and agrees to make a good faith effort to hire local employees to fulfill its requirements under Article 5, Paragraph A. "Local" is defined, for the purposes of this Paragraph, as an employee whose principal residence is located within the city limits of the City of San Antonio or within the county limits of Bexar County.

O. Notification Requirement Regarding Sale or Transfer of Property. DEVELOPER covenants and agrees to notify CITY in writing at least 30 days prior to any sale or transfer of the Property during the Term. The above notwithstanding, the notice requirement in this Section O shall not apply to any mortgage or pledge of all or any portion of the Property by DEVELOPER or any residential, retail, office or parking lease or license agreement in connection with the leasing or licensing of space within the Property or Complex. CITY shall not unreasonably withhold approval of any requests for Assignment of this Agreement by DEVELOPER under Article 11 and any new purchaser or transferee requesting Assignment shall be bound by same. Failure to provide the required notification under this Article 5, Paragraph N shall render DEVELOPER subject to the termination and recapture provisions under Article 7, Paragraphs F and H without benefit of the Cure Period (as defined in Article 7, Paragraph F).

P. Penalty for Default/Termination. If, during the Term of this Agreement, DEVELOPER fails to: (1) make the minimum real property improvement investment and substantially complete construction by June 1, 2008; or (2) fails to provide access to healthcare benefits to its non-temporary full-time employees working at the Complex, as well as their dependents as detailed in Paragraph 5A, for a period of three [3] or more consecutive months; or (3) does not comply with the Required Use for a period of three (3) or more consecutive months, all as mandated under Article 5, Paragraph A of this Agreement, then after notice and opportunity to cure (except as to Section 5O, Notification Requirement Regarding Sale, Transfer or Sub-lease of Property) the termination and recapture provisions of Article 7, Paragraphs E, F and H of this Agreement shall apply against DEVELOPER.

Q. Other Actions Resulting in Default/Termination. If, during the Term of this Agreement, DEVELOPER allows its ad valorem taxes due on the land, personal property or inventory and supplies to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest, or is in default with any loan which has been made by the San Antonio Development Agency, San Antonio Local Development Company, dba South Texas Business Fund, City of San Antonio Industrial Development Authority or any other CITY-sponsored loan/grant/bond program, then the termination and recapture provisions of Article 7, Paragraphs F and H of this Agreement shall apply.

## 6. TAX PHASE-IN

A. Term. The Tax Phase-In Period (the "Term") for the Property improvements shall be for ten (10) years beginning the year following substantial completion of the property but in any case the term will start no later than January 1, 2009. The base year for calculating the value of the Complex shall be January 1, 2007. The "Base Year Value" of the Property shall be the assessed value (determined by the Bexar Appraisal District), as of the Base Year, of the real property located thereon.

B. Conditions Precedent. At the commencement of the Term, DEVELOPER shall own, have an interest in or otherwise control the Property and shall have complied with Article 5, Paragraphs F and G of this Agreement during site development. DEVELOPER shall also maintain the Required Use in the Complex. A Tax Phase-In shall be granted in each year of the Term as described in Article 6, Paragraph C below.

C. Additional Conditions Precedent and Tax Phase-In Percentage. Provided that DEVELOPER has invested a minimum of THIRTY EIGHT MILLION DOLLARS (\$38,000,000.00) in the Complex by JUNE 1, 2008 save and except for events of Force Majeure, DEVELOPER has provided access to healthcare benefits for its non-temporary full-time employees working at the Complex, and their dependents as specified in Article 5, Paragraph A of this Agreement, DEVELOPER maintains the Complex for its Required Use, DEVELOPER is otherwise in compliance with the conditions of this Agreement and the CITY has not notified DEVELOPER of a default under the terms and conditions of this Agreement that DEVELOPER has not timely cured (except as to Article 5, Paragraph O), then one hundred percent (100%) of the ad valorem taxes for the real property improvements, above the Base Year Value, shall be abated during the Term. There shall be no abatement of taxes for land, personal property, inventory or supplies.

D. Pre-Term Taxes. DEVELOPER shall pay, or cause to be paid, to the CITY ad valorem personal property taxes and real property taxes assessed, if any and as applicable, by the CITY on the Property prior to the commencement of the Term.

E. Base Year Taxation. DEVELOPER understands and agrees that: (i) the Base Year Value of the Property and the tax levy based on said Base Year Value of the Property in the Zone shall not decrease, (ii) personal property taxes and ad valorem taxes may increase; and (iii) the amount of personal property taxes and real property taxes paid by DEVELOPER to the CITY attributable to the Property during the Term shall not be less than the amount of taxes attributable to the Property paid to the CITY for the base year tax year, if any, except in the event of casualty or condemnation of the Complex in the Zone.

F. Protest Rights. DEVELOPER shall have the right to protest appraisals of the Property, or any portion thereof, or the value of any improvements over and above the Base Year Value as applicable.

## 7. **DEFAULT/TERMINATION/RECAPTURE**

A. Termination and Recapture of Taxes in Event of Failure to Meet Minimum Investment or Construction Requirements. If DEVELOPER fails to invest at least THIRTY EIGHT MILLION DOLLARS (\$38,000,000.00) in real property improvements or substantially complete construction of those improvements by June 1, 2008, except if such failure is caused by a Force Majeure, as defined in Article 8, then subject to notice of default and right to cure (except as to Article 5, Paragraph O) City Council shall have the right to terminate this Agreement and the Term. Said terminations shall be effective for the calendar year during which DEVELOPER was no longer in compliance with this Agreement as stated herein. Upon said terminations, real property taxes otherwise abated for that calendar year and all previously abated taxes under this Agreement shall be recaptured (based on the table in Article 7, Paragraph H) and shall be paid to CITY within sixty (60) calendar days from the date of said termination notices to DEVELOPER by CITY.

B. Termination and Recapture of Taxes in Event of Cessation or Change in Required Use. If DEVELOPER maintains the Complex for its Required Use and subsequently ceases or changes the use of the Complex during the Term, except if such cessation or change in use is caused by a Force Majeure, as defined in Article 8 or the establishment of the Condominium Project as defined in Article 3, then subject to notice of default and right to cure (except as to Article 5, Paragraph O), City Council shall have the right to terminate this Agreement and the Term. Said terminations shall be effective during the calendar year during which the expiration of DEVELOPER's right to cure occurred (if applicable). Upon said terminations, real property taxes otherwise abated for that calendar year and all previously abated taxes under this Agreement shall be recaptured (based on the table in Article 7, Paragraph H) and shall be paid to CITY within sixty (60) calendar days from the date of said termination notices to DEVELOPER by CITY.

C. Termination and Recapture of Taxes in Event of Failure to Provide Access to Affordable Healthcare Benefits to Non-Temporary Full-Time Employees and Their Dependents. If DEVELOPER provides access to affordable healthcare benefits to its non-temporary full-time employees at the Complex, as well as their dependents as provided in Article 5, Paragraph A, and subsequently ceases providing access to these benefits (or a substantial portion thereof) for a continuous period of three months during the Term for any reason, except if such cessation is caused by a Force Majeure as defined in Article 8 subject to notice of default and right to cure (except as to Article 5, Paragraph O), then the City Council shall have the right to terminate this Agreement and the Term. Said terminations shall be effective for the calendar year during which the date of expiration of DEVELOPER's right to cure occurred, if applicable. Upon said terminations, real property taxes otherwise abated for that calendar year and all previously abated taxes under this Agreement shall be recaptured (based on the table in Article 7, Paragraph H) and shall be paid to CITY within sixty (60) calendar days from the date of said termination notices to DEVELOPER by CITY.

D. Recapture of Taxes Following Term of Agreement. If the Term expires and DEVELOPER fails to meet the investment or construction requirements, fails to provide the required access to healthcare benefits or fails to maintain the Required Use (as required in



) Article 3, Paragraph A and Article 5, Paragraphs A and E.) at the Complex, then subject to notice of default and right to cure (except as to Article 5, Paragraph O), the City Council shall also have the right to recapture from DEVELOPER a percentage of the previously abated real property taxes based on the table in Article 7, Paragraph H of this Agreement.

E. Cure Period and Declaration of Default. During the Term, CITY may declare a default if DEVELOPER fails to comply with any of the terms of this Agreement. Should CITY determine DEVELOPER is in default under any of the terms of this Agreement, CITY will notify DEVELOPER in writing at the address below in Article 9 (except as to Article 5, Paragraph O). If said default is not cured within sixty (60) calendar days from the date of such notice (hereinafter the "Cure Period"), then City Council shall have the right to terminate this Agreement. If there is a finding of default pursuant to Article 5, Paragraph O, then no Cure Period shall apply. CITY shall extend the Cure Period if DEVELOPER commences the cure within the Cure Period and DEVELOPER is diligently pursuing such cure. If the Agreement is terminated as a result of default, tangible real property taxes will be due for the tax year during which the termination occurred and shall accrue without further abatements for all tax years thereafter; in addition, CITY shall have the right to recapture (based on the table in Article 7, Paragraph H) from DEVELOPER all previously abated real property taxes under this Agreement and said taxes shall be paid by DEVELOPER within sixty (60) calendar days of receiving CITY'S written notification of recapture.

) F. Additional Rights to Terminate. If DEVELOPER allows its ad valorem taxes due on the Base Year Value of the tangible real property to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest, or is in default with any loan which has been made by the San Antonio Development Agency, San Antonio Local Development Company dba South Texas Business Fund, City of San Antonio Industrial Development Authority or any other CITY sponsored loan/grant/bond program following notice and right to cure (except as to Article 5, Paragraph O), City Council shall have the right to terminate this Agreement under Article 7, Paragraph F. Taxes will then be due for the tax year during which the termination occurred and shall accrue without abatement for all tax years thereafter and all taxes previously abated by virtue of this Agreement will be recaptured (based on the table in Article 7, Paragraph H) and paid by DEVELOPER within sixty (60) calendar days of receiving CITY'S notice of termination.

G. Termination in Event of Taking by Eminent Domain. If the Complex, or any portion of the Property in the Complex, is taken by any public or quasi-public authority under the power of eminent domain, condemnation or expropriation, then the Abatement shall terminate (only as to the portion of the Property or Complex affected by the taking), effective as of the calendar year during which the taking occurs, and there shall be no recapture of taxes. In such event, DEVELOPER shall have the right to continue or to terminate this Agreement, for the remaining portion of the Property or Complex, without recapture or other penalty. Nothing herein shall preclude DEVELOPER from seeking all available recovery for said taking.

) H. Calculation of Taxes Subject to Recapture. If an event giving rise to a recapture occurs hereunder, then the City Council shall have the right to recapture from DEVELOPER a percentage of the abated real property taxes based on the following table:

TERM YEAR

TOTAL TAX PREVIOUSLY ABATED  
SHALL BE MULTIPLIED BY:

1-10

100%

Beginning in year 11 through year 16 following the Term (the "Extended Term") in the event the use of the Residential Unit of the Complex is changed to something other than residential use, the CITY shall also have the right to recapture from DEVELOPER a percentage of the previously abated real property taxes for such Residential Unit based on the following formula:

11	100%
12	80%
13	60%
14	40%
15	20%
16	10%

FORMULA: The recapture formula shall be:

$$\begin{array}{rcccl} & & \text{Applicable Percentage} & & \text{Amount to be} \\ \text{Total Taxes Abated} & \times & \text{from above Schedule} & = & \text{Recaptured} \end{array}$$

CITY shall recalculate the amount of recapture pertaining to each tax year utilizing the above formula. A bill for each year will then be sent to DEVELOPER.

I. No Other Remedies Available. Except for acts of fraud or intentional misconduct by DEVELOPER under this Agreement, the CITY'S sole and exclusive remedy for a default by DEVELOPER under this Agreement shall be to either terminate this Agreement and/or seek the recapture. In DEVELOPER'S default under this Agreement is due to the DEVELOPER'S fraud or intentional misconduct, CITY shall have the right to seek any remedy at law to which it may be entitled, in addition to termination and/or recapture. Any termination and/or recapture shall be subject to any and all lawful offsets, settlements, deductions or credits to which DEVELOPER may be entitled. The termination and/or recapture of taxes provided in this Article 7 are not applicable to situations involving minor changes to the description of the Property or Complex, or changes in ownership or in management thereof, so long as DEVELOPER or a Related Organization or its CITY-approved successor or assignee continues conducting the Required Use or other authorized activities thereon as provided hereinabove. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY HERETO BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR OTHERWISE) UNDER OR IN RESPECT OF THIS AGREEMENT.

8. **AUTHORIZED RELIEF FROM PERFORMANCE (Force Majeure)**

For purposes of this Agreement, "Force Majeure" is defined as any obligation of DEVELOPER which is delayed or not performed due to an act of God, natural disasters, strike, riot, war (whether declared or undeclared), laws, or governmental regulations or restrictions. In addition to relief expressly granted in this Agreement, CITY may grant relief from performance of this Agreement if DEVELOPER is prevented from compliance and performance by an event of Force Majeure. The burden of proof for the need for such relief shall rest upon DEVELOPER. To obtain release based upon this Article 8, DEVELOPER must file a written request with the CITY'S Economic Development Department for processing to City Council for a decision, authorized by a duly approved Ordinance.

9. **NOTICE**

Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (a) delivered in person to the address set forth herein below for the party to whom the notice is given; (b) placed in the United States mail with postage prepaid, return receipt requested, properly addressed to such party at the address hereinafter specified; or (c) deposited, with fees prepaid, into the custody of a nationally recognized overnight delivery service such as FedEx, addressed to such party at the address hereinafter specified. Any notice mailed in the above manner shall be effective upon its deposit into the custody of the United States Postal Service or such nationally recognized delivery service as applicable; all other notices shall be effective upon receipt. From time to time, either party may designate another address for all purposes under this Agreement by giving the other party no less than ten (10) calendar days advance written notice of such change of address in accordance with the provisions hereof.

TO DEVELOPER:

- (Whether personally delivered or mailed):

VISTANA LTD  
Attn: Edward A. Cross, II  
100 Sandau Road, Suite 300  
San Antonio, Texas 78216

TO CITY:

- If mailed:

Economic Development Department  
Attn: Director  
P.O. Box 839966  
San Antonio, Texas 78283-3966

- If by personal or overnight delivery:

Economic Development Department  
Attn: Director  
City Hall, 4th Floor  
Military Plaza  
San Antonio, Texas 78205

10. **CONDITION**

This Agreement is conditioned entirely upon the approval of the San Antonio City Council, as evidenced by duly approved Ordinance Number \_\_\_\_\_, dated August 17, 2006.

2006-08-17-0917

11. **ASSIGNMENT**

Except as otherwise expressly provided herein, this Agreement may be assigned or otherwise transferred only with City Council's prior approval (which approval shall not be unreasonably withheld, delayed or denied), as reflected in a duly adopted ordinance. However, the Parties agree that assignment to more than one Residential Unit or other individual property owners within the Complex other than a Related Organization shall not be considered nor granted. DEVELOPER must submit a written request to CITY for approval of the proposed assignment or other transfer requiring approval at least thirty (30) days prior to the effective date of the assignment or transfer of any part of the Property or of the Complex. Notwithstanding the foregoing, DEVELOPER may assign or transfer this Agreement without the consent or approval of CITY or the City Counsel (a "Permitted Transfer") to a parent of DEVELOPER, a subsidiary of DEVELOPER, an affiliate entity of DEVELOPER, or to any new entity created as a result of a merger, acquisition or other corporate restructure or reorganization of DEVELOPER so long as DEVELOPER'S obligations hereunder are assumed by such entity. It shall also be a Permitted Transfer hereunder if DEVELOPER conveys, transfers or sells all or substantially all of the Retail Unit or Parking Unit or transfers and assigns this Agreement to any person or entity acquiring all or substantially all of the Retail Unit or Parking Unit, provided that (i) DEVELOPER provides CITY prior written notice of transfer of the Retail Unit or Parking Unit; (ii) DEVELOPER'S obligations hereunder are assumed by such person or entity acquiring the Retail Unit or Parking Unit, (iii) the use of the Retail Unit or Parking Unit shall not change during the term of this Agreement, and (iv) the abatement of ad valorem taxes under this Agreement on the Retail Unit and/or Parking Unit shall cease and terminate effective upon the sale of the Retail Unit and/or Parking Unit, as the case may be. Although the ad valorem tax abatement provided under this Agreement shall cease upon the conveyance or sale of the Retail Unit or Parking Unit, CITY shall have no right to recapture from DEVELOPER the previously abated real property taxes under this Agreement in the event of the conveyance or sale of the Retail Unit or Parking Unit as contemplated in the previous sentence. DEVELOPER shall give CITY prior written notice of all Permitted Transfers, as required under Article 5, Paragraph P. All future assignees shall be bound by all terms and/or provisions and representations of this Agreement. Where the context requires, the term "DEVELOPER" shall mean DEVELOPER identified in the first paragraph and all permitted successors and assigns.

## 12. INDEMNIFICATION

DEVELOPER covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to DEVELOPER's activities under this CONTRACT, including any acts or omissions of DEVELOPER, any agent, officer, director, representative, employee, consultant or subcontractors of DEVELOPER, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this CONTRACT, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. DEVELOPER shall advise the CITY in writing within 24 hours of any claim or demand made against the CITY or DEVELOPER known to DEVELOPER related to or arising out of DEVELOPER's activities under this CONTRACT and shall see to the investigation and defense of such claim or demand at DEVELOPER's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving DEVELOPER of any of its obligations under this paragraph.

It is the EXPRESS INTENT of the parties to this CONTRACT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by DEVELOPER to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. DEVELOPER further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any ~~claim-or-litigation-brought-against-the-CITY-and-its-elected-officials,-employees,-officers,~~ directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

**13. GENERAL PROVISIONS**

A. None of the real property improvements described in this Agreement are financed by tax increment bonds.

B. This Agreement is entered into subject to the rights of the holders of outstanding bonds of the CITY related to this project. No bonds for which the CITY is liable have been used to finance this project.

C. No amendment, modification, or alteration of the terms hereof shall be binding unless in writing dated subsequent to the date of this Agreement and duly authorized by the parties. DEVELOPER acknowledges that City Council approval is required for any and all of these actions.

**14. SEVERABILITY**

In the event any section, subsection, paragraph, subparagraph, sentence, phrase or work herein is held invalid, illegal, or unenforceable, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, subparagraph, sentence, phrase or word. In such event there shall be substituted for such deleted provisions a provision as similar as possible in terms and in effect to such deleted provision that is valid, legal and enforceable. This Agreement constitutes the entire Agreement between the parties hereto relating to the subject matter contained herein and supersedes all prior, oral or written agreements, commitments or understandings with respect to the matters provided for herein.

**15. ESTOPPEL CERTIFICATE**

Any party hereto may request an estoppel certificate related to this project (hereafter referred to as "Certificate") from another party hereto so long as the Certificate is requested in connection with a bona fide business purpose. The Certificate, which if requested, will be addressed to a subsequent purchaser or assignee of DEVELOPER or other party designated by DEVELOPER which shall include, but not necessarily be limited to, statements that this Agreement is in full force and effect without default, if such is the case, the remaining Term of this Agreement, the levels of tax abatement in effect, and such other matters reasonably requested by the party(ies) to receive the Certificate.

**16. OWNER STANDING**

DEVELOPER, as a party to this Agreement, shall be deemed a proper and necessary party in any litigation questioning or challenging the validity of this Agreement or any of the underlying ordinances, resolutions, or City Council actions authorizing same, and DEVELOPER shall be entitled to intervene in said litigation.

17. **APPLICABLE LAW**

This Agreement shall be construed under the laws of the State of Texas and is performable in Bexar County, Texas, the location of the DEVELOPER Reinvestment Zone.

18. **DUPLICATE ORIGINALS**

This Agreement shall be executed in two duplicate originals, with a duplicate original going to each party.

**VISTANA, LTD.**

a Texas Limited Partnership

By: Vistana Management, LLC  
a Texas limited liability company  
Its sole General Partner

BY: Edward A. Cross, II  
Edward A. Cross, II  
Manager

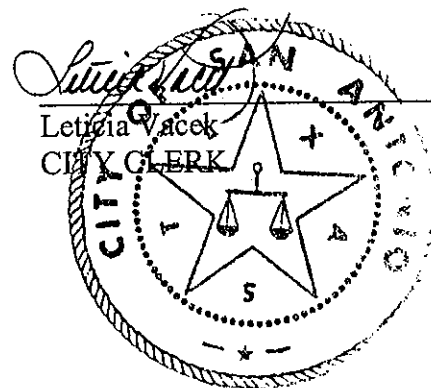
**CITY OF SAN ANTONIO,**  
a Texas Municipal Corporation

Sheryl Sculley  
for Sheryl Sculley  
CITY MANAGER

ATTEST:

Name: [Signature]  
Title: Attorney for Vistana, Ltd.

ATTEST:



APPROVED AS TO FORM:

Michael Bernard  
Michael Bernard  
CITY ATTORNEY

# **EXHIBIT A**



**EXHIBIT A**  
**Empowerment Zone Map**

## **EXHIBIT B**

**EXHIBIT B**  
**Property Description**

### Legal Description

0.596 acres (25,957 square feet) of land out of Lots 12, 13, 14, 15, 16, 17 and 18, N.C.D. 175, Urban Renewal's Rosa Verde Project Tax R-78 Subdivision, as conveyed by the Urban Renewal Agency of San Antonio to the Avanto Group, LTD recorded by deed in Volume 2401, Page 580 of the Deed and Plat Records of Bexar County Texas; said tract being the southern portion of Lot 20, N.C.D. 175, Urban Renewal's Rosa Verde Project Tax R-78 Subdivision and described as follows:

Beginning at a set nail in concrete in the east right-of-way line of Santa Rosa Street (variable width right-of-way) at the point of tangency of the northeast curve return from the north right-of-way line of Commerce Street (variable width right-of-way) to the east right-of-way line of said Santa Rosa Street;

Thence, North 05 degrees 53 minutes 40 seconds East, 128.98 feet along the east right-of-way line of said Santa Rosa Street to a found "X" in concrete at the southwest corner of said north portion of Lot 20 and being the northwest corner of the herein described tract;

Thence, South 84 degrees 06 minutes 12 seconds East, 151.97 feet along the south line of said north portion of Lot 20 to a found "X" in concrete in the west right-of-way line of Laredo Street (40 foot right-of-way), said point being the northeast corner of the herein described tract;

Thence, South 04 degrees 01 minutes 00 seconds West, 165.89 feet along the west right-of-way line of said Laredo Street to a set nail in concrete for a point of curvature for the northwest curve return from the west right-of-way line of said Laredo Street to the north right-of-way line of said Commerce Street;

Thence, 15.38 feet along the arc of a curve to the right having a radius of 10.00 feet, a central angle of 88 degrees 07 minutes 59 seconds, and a chord bearing and distance of South 48 degrees 05 minutes 00 seconds West, 13.51 feet to a set nail in concrete for a point of tangency in the north right-of-way line of said Commerce Street;

Thence, North 07 degrees 11 minutes 00 seconds West, 7.28 feet along the north right-of-way line of said Commerce Street to a set nail in concrete for a point of curvature;

Thence, 129.34 feet along the arc of a curve to the right having a radius of 249.00 feet, a central angle of 27 degrees 32 minutes 50 seconds and a chord bearing and distance of North 74 degrees 04 minutes 31 seconds West, 128.10 feet along the north right-of-way line of said Commerce Street to a set nail in concrete for a point of tangency;

Thence, North 60 degrees 10 minutes 02 seconds West, 5.19 feet along the north right-of-way line of said Commerce Street to a set nail in concrete for a point of curvature in the northeast curve return from the north right-of-way line of said Commerce Street to the east right-of-way line of said Laredo Street;

Thence, 20.08 feet along the arc of a curve to the right having a radius of 20.00 feet, a central angle of 06 degrees 11 minutes 17 seconds and a chord bearing and distance of North 27 degrees 11 minutes 50 seconds West, 21.29 feet to the point of

Being an irregular parcel of land containing 25,958 square feet more or less out of Lots 12, 13, 14, 15, 16, 17, and 18, New City Block 175, situated within the corporate limits of the City of San Antonio, Bexar County, Texas. Said parcel of land will be filed under Urban Renewal's Rosa Verde Project Tex R-78 Subdivision, and will be on the southern portion of Lot 20, New City Block 175; said parcel being specifically described as follows:

BEGINNING at a point on the east line of Santa Rosa Street, South 5 degrees 53 minutes 48 seconds West, 233.53 feet and South 84 degrees 06 minutes 12 seconds East, 110.00 feet from the intersection of the north line of Houston Street and the west line of Santa Rosa Street;

THENCE South 5 degrees 53 minutes 48 seconds West, along the east line of Santa Rosa Street 128.98 feet, to a point of curvature;

THENCE following the curve to the left 28.88 feet to the point of tangency on the north line of Commerce Street. The curve has a radius of 25.00 feet and a delta angle of 56 degrees 11 minutes 50 seconds;

THENCE South 60 degrees 18 minutes 02 seconds East, along the north line of Commerce Street 5.19 feet, to a point of curvature;

THENCE continuing along the north line of Commerce Street and following curve to the left 129.34 feet to a point of tangency. The curve has a radius of 269.00 feet and a delta angle of 27 degrees 32 minutes 58 seconds;

THENCE South 87 degrees 51 seconds 00 minutes East, along the north line of Commerce Street 2.28 feet, to a point of curvature;

THENCE along a curve to the left 15.38 feet to the point of tangency. The curve has a radius of 10.00 feet and a delta angle of 88 degrees 07 minutes 59 seconds;

THENCE along the west line of Laredo Street North 04 degrees 01 minutes East, 165.89 feet, to a point;

THENCE across Lot 20, North 84 degrees 06 minutes 12 seconds West, 151.99 feet, to the POINT OF BEGINNING.

## **EXHIBIT C**

THE UNITED STATES CONGRESS HAS ENACTED VARIOUS LAWS GOVERNING THE EMPLOYMENT RELATIONSHIP BETWEEN EMPLOYERS AND EMPLOYEES INCLUDING, BUT NOT LIMITED TO, TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, THE AMERICAN DISABILITIES ACT, THE AGE DISCRIMINATION IN EMPLOYMENT ACT, THE NATIONAL LABOR RELATIONS ACT, THE FAIR LABOR STANDARDS ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE EQUAL PAY ACT, THE EMPLOYEE POLYGRAPH PROTECTION ACT, THE IMMIGRATION REFORM AND CONTROL ACT, THE CIVIL RIGHTS ACT OF 1991, THE REHABILITATION ACT OF 1973, THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994, THE FAMILY AND MEDICAL LEAVE ACT, THE EMPLOYEE RETIREMENT INCOME SECURITY ACT AND THE WORKERS ADJUSTMENT AND RETRAINING NOTIFICATION ACT.

## **EXHIBIT D**



# INVESTMENT FOR TAX PHASE-IN REQUEST FORM

Provide support documents, or appropriate summaries of same, only for activity occurring during the reporting period of \_\_\_\_\_ to \_\_\_\_\_. Please fax this form by January \_\_, 200\_\_. **Return this form with attached documentation no later than \_\_\_\_\_ to:**

City of San Antonio  
Economic Development Department  
**Attn: Contract Officer**  
100 Military Plaza  
City Hall, 4<sup>th</sup> Floor  
San Antonio, TX 78205  
(210) 207-8080  
FAX (210) 207-8151

## **Real Property Improvements**

Expenditures associated with the real property improvements to your Phase I Complex for the above reporting period. **Verification may include AIA forms, receipts, invoices, requests for payment from the contractor, etc.**

Improvements occurring since \_\_\_\_\_: \$ \_\_\_\_\_ (attach supporting documents)  
Improvements existing prior to \_\_\_\_\_: \$ \_\_\_\_\_

**Total Real Property Improvements:** \$ \_\_\_\_\_

## **Personal Property Improvements:**

Expenditures associated with the personal property improvements to your Phase I Complex for this reporting period. **Verification may include receipts, invoices, requests for payment, etc.**

Improvements occurring since \_\_\_\_\_: \$ \_\_\_\_\_ (attach supporting documents)  
Improvements existing prior to \_\_\_\_\_: \$ \_\_\_\_\_

**Total Personal Property Improvements:** \$ \_\_\_\_\_

*I certify, under penalty of perjury, that the information provided on this form and attached support documents are true and correct.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Company Name

# EMPLOYEE WAGE INFORMATION FOR TAX PHASE-IN REQUEST FORM

Provide support documents, or appropriate summaries of same, only for activity occurring during the reporting period of \_\_\_\_\_, 200 \_\_\_\_ . **Please fax this sheet to:**

City of San Antonio  
Economic Development Department  
**Attn: Contract Officer**  
100 Military Plaza  
City Hall, 4<sup>th</sup> Floor  
San Antonio, TX 78205  
(210) 207-8080  
(210) 207-8151 FAX

\_\_\_\_\_  
Company Name

**\*Total** Number of Employees (full-time Only) \_\_\_\_\_

**\*\*Total** Number of New jobs created \_\_\_\_\_

**\*\*\*Number of Employees Earning At or Above Wage Standard** \_\_\_\_\_

• Minimum Hourly Wage for all employees \_\_\_\_\_

**\*\*\*Wage standard will remain constant throughout a company's Tax Phase-In Term. Standard will be the minimum hourly earnings (for San Antonio MSA) in force at the time Agreement was signed.**

Please **attach support documents, or appropriate summaries of same**, such as payroll registers to document total number of employees, dates of hire, hourly wages of employees and weekly number of hours worked. **Personal identifying information is not required.**

*I certify, under penalty of perjury, that the information provided on this form and attached support documents are true and correct.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Company Name

**\*number of employees on** \_\_\_\_\_

**\*\* Created from** \_\_\_\_\_ **to** \_\_\_\_\_

**FIRST AMENDMENT TO THE TAX PHASE-IN AGREEMENT**

**BETWEEN THE CITY OF SAN ANTONIO AND VISTANA LTD.**

This FIRST AMENDMENT to the TAX PHASE-IN AGREEMENT (this "FIRST AMENDMENT") is entered into by and between the CITY OF SAN ANTONIO ("City") and VISTANA LTD. ("DEVELOPER") together referred to as "the Parties."

**RECITALS**

A. City and DEVELOPER are parties to that certain TAX PHASE-IN AGREEMENT (the "Agreement") authorized by City of San Antonio Ordinance No. 2006-08-17-0917, passed and approved on August 17, 2006.

B. Prior to the effectiveness of this FIRST AMENDMENT, the AGREEMENT provided for certain deadlines, as described below, to complete the Project.

D. City and DEVELOPER desire to amend the AGREEMENT in accordance with the terms and conditions of this FIRST AMENDMENT.

E. All other provisions of the AGREEMENT shall remain in full force and effect.

**RENEWAL**

NOW THEREFORE, the Parties hereby agree and amend as follows:

1. Definitions. All capitalized terms used in this FIRST AMENDMENT without definition herein shall have the meanings assigned to such terms in the AGREEMENT.
2. Amendment. The Parties hereby agree to amend the AGREEMENT as follows:
  - (A) Section 3 (A) is hereby amended by deleting the date JUNE 1, 2008 and replacing with APRIL 30, 2009.
  - (B) Section 5 (A) is hereby amended by deleting the date JUNE 1, 2008 and replacing with APRIL 30, 2009.
  - (C) Section 5 (H) is hereby amended by deleting the first sentence in its entirety and replacing with the following:

"DEVELOPER shall substantially complete construction of the real property improvements by April 30, 2009."
  - (D) Section 5 (P) (1) is hereby amended by deleting the first sentence in its entirety and replacing with the following:

"make the minimum real property improvement investment and substantially complete construction by April 30, 2009;"

- (E) Section 6 (A) is hereby amended by deleting the first sentence in its entirety and replacing with the following:

"The Tax Phase-In Period (the "Term") for the Property improvements shall be for ten (10) years beginning the year following substantial completion of the property but in any case the term will start no later than January 1, 2009."

- (F) Section 6(C) is hereby amended by deleting the date JUNE 1, 2008 and replacing with APRIL 30, 2009.

- (G) Section 7 (A) is hereby amended by deleting the first sentence in its entirety and replacing with the following:

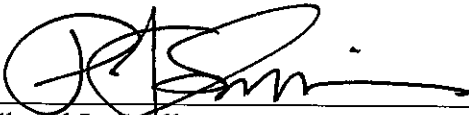
"If DEVELOPER fails to invest at least THIRTY EIGHT MILLION DOLLARS (\$38,000,000.00) in real property improvements or substantially complete construction of those improvements by April 30, 2009, except if such failure is caused by a Force Majeure, as defined in Article 8, then subject to notice of default and right to cure (except as to Article 5, Paragraph O) City Council shall have the right to terminate this Agreement and the Term."

3. Effective Date. This FIRST AMENDMENT shall be effective upon passage of a duly authorized ordinance of the City Council of the City of San Antonio which shall be attached hereto and made a part of this FIRST AMENDMENT.
4. No Other Changes. Except as specifically set forth in this FIRST AMENDMENT, all of the terms and conditions of the AGREEMENT shall remain the same and are hereby ratified and confirmed. The AGREEMENT shall continue in full force and effect and with this FIRST AMENDMENT shall be read and construed as one instrument.
5. Choice of Law. This FIRST AMENDMENT shall be construed in accordance with and governed by the laws of the State of Texas.
6. Counterparts. This FIRST AMENDMENT may be executed in any number of counterparts, but all such counterparts shall together constitute but one instrument. In making proof of this FIRST AMENDMENT it shall not be necessary to produce or account for more than one counterpart signed by each party hereto by and against which enforcement hereof is sought.


*Signatures appear on next page.*

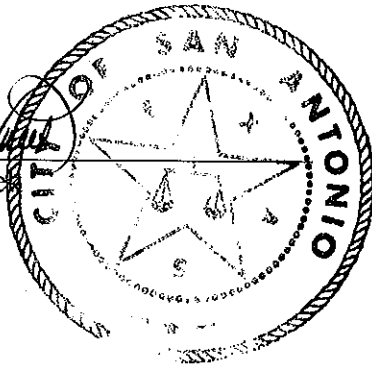
WITNESS HEREOF, the parties hereto have executed in duplicate originals this FIRST AMENDMENT on the \_\_\_\_\_ day of \_\_\_\_\_ 2008.

**CITY OF SAN ANTONIO**  
a municipal corporation

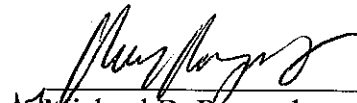
  
for Sheryl L. Sculley  
City Manager

ATTEST:

  
Leticia Vaca  
City Clerk




APPROVED AS TO FORM:


  
Michael D. Bernard  
City Attorney

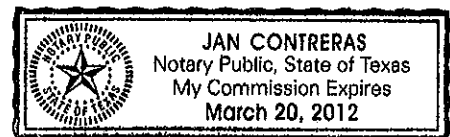
**VISTANA, LTD.,**  
a Texas limited partnership

By: Vistana Management, LLC,  
a Texas limited liability company,  
its General Partner

By:   
Name: Edward A. Cross II  
Title: Manager

ATTEST:

  
Name: Jan Contreras  
Title: Notary Public



STATE OF TEXAS

COUNTY OF BEXAR

§  
§  
§  
§  
§

**ECONOMIC DEVELOPMENT  
LOAN AGREEMENT OF THE  
CITY OF SAN ANTONIO**

This Economic Development Loan Agreement (hereinafter referred to as the "Agreement") is made and entered into by and between the CITY of San Antonio, a municipal corporation of the State of Texas, (hereinafter referred to as "CITY"), acting by and through its CITY Manager or her designee, and VISTANA L.T.D. (hereinafter referred to as "CONTRACTOR"), and together referred to as the "Parties.

**WHEREAS**, pursuant to Chapter 380 of the Texas Local Government Code, CITY is authorized to loan municipal funds in furtherance of public purposes for economic development projects; and

**WHEREAS**, in accordance with CITY of San Antonio CITY Ordinance No. 100684, CITY created an economic development program for the purpose of making such loans available; and

**WHEREAS**, CONTRACTOR is engaged in an economic development project that will be located within the CITY limits of the CITY of San Antonio and will consist of the construction and operation of a fourteen (14) story mixed-use multi-family, market-rate rental housing complex; and

**WHEREAS**, CONTRACTOR has requested an economic development loan for the purpose of deferring costs associated with construction related to the economic development project; and

**WHEREAS**, CITY has identified economic development funds available for CONTRACTOR to use to carry out the project and to repay to CITY in accordance with the terms and conditions in this Agreement; and

**WHEREAS**, the CITY Council of CITY authorized the CITY Manager or designee to enter into this Agreement with CONTRACTOR as reflected in Ordinance No. 2006-12-14-1424, passed and approved on December 14, 2006; **NOW THEREFORE**:

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described:

**SECTION 1. AGREEMENT PURPOSE**

CONTRACTOR shall complete the construction, start-up and operation of an economic development project, consisting of a FOURTEEN (14) story mixed-use multi-family, market-rate rental housing complex consisting of approximately FIVE HUNDRED THOUSAND (500,000) square feet (the "Complex"). The Complex shall house TWO HUNDRED AND FORTY (240) residential units comprising approximately TWO HUNDRED AND THIRTY-FIVE THOUSAND (235,000) square-feet. An additional THIRTY THOUSAND (30,000) square feet of the complex shall be used for retail, office or similar commercial use. CONTRACTOR will also construct and maintain an above-ground parking garage adjacent to the complex with approximately FOUR HUNDRED AND FIFTY (450) spaces for both public and private use. CONTRACTOR shall also make streetscape improvements associated with the Complex in coordination with the CITY and other interested parties. The Complex is further described in CONTRACTOR's application for tax phase-in assistance (Attachment I), its Tax Phase-In Agreement with CITY (Attachment II), authorized by CITY Ordinance 2006-08-17-0917, passed and approved on August 17, 2006. Said economic development project is anticipated to promote local

economic development and stimulate business and commercial activity in the CITY of San Antonio (hereinafter referred to as the "Project"). The CITY is supporting the Project through this economic development loan to provide funds for the purpose of defraying costs associated with the construction and operation of the Project and this Agreement is a component of a larger incentive package intended, in part, to attract and retain high-impact companies that support the CITY's targeted industries and that may be used to leverage private, state or federal funds intended to achieve the same goals.

## **SECTION 2. PROJECT REQUIREMENTS**

**In addition to the requirements specified in Attachment II, the following requirements apply to CONTRACTOR:**

- A. CONTRACTOR shall invest a minimum of THIRTY-EIGHT MILLION DOLLARS AND NO CENTS (\$38,000,000.00) in real property improvements of the property described in Attachment II.
- B. CONTRACTOR shall, as specified in Attachment II, operate an economic development project consisting of (i) one retail unit which shall be used for retail, office or similar commercial use; (ii) one parking unit which shall be used for public and private parking, and (iii) one residential unit which shall be used for multi-family, market-rate rental housing.
- C. CONTRACTOR shall complete the Project before July 31, 2008 and in no case later than January 1, 2009.
- D. CONTRACTOR shall comply with all applicable laws and regulations, and shall develop and operate the Complex in accordance with the terms and conditions of this Agreement, Attachment I, and Attachment II.

## **SECTION 3. ECONOMIC DEVELOPMENT PROGRAM LOAN**

- A. **Economic Development Program Loan.** CITY has agreed to provide CONTRACTOR with an Economic Development Program Loan in an amount of ONE MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$1,800,000.00). CITY and CONTRACTOR agree that this loan shall be secured solely by a lien on the property that is the subject of CONTRACTOR's economic development project, specifically that property legally described as Lot 1, Block C, New City Block 175, Santa Rosa Lofts Subdivision, in the City of San Antonio, Bexar County, Texas. Such lien shall not include any rights of foreclosure and shall be subordinate to purchase money liens and secured loans.
- B. **Loan Disbursement.** Promptly following the completion of construction of the Project evidenced by the issuance of a Certificate of Occupancy, but in no event later sixty (60) days following the issuance of a Certificate of Occupancy, the CITY will make available to CONTRACTOR an Economic Development Program Loan in the total amount of ONE MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$1,800,000.00), to be advanced to CONTRACTOR in six annual disbursements of THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) each, according to the following schedule and subject to future appropriations by the City Council of CITY:

### **SCHEDULE OF DISBURSEMENT\***

JUNE 30, 2008	\$300,000.00
JUNE 30, 2009	\$300,000.00
JUNE 30, 2010	\$300,000.00
JUNE 30, 2011	\$300,000.00

JUNE 30, 2012	\$300,000.00
JUNE 30, 2013	\$300,000.00

\*This schedule is subject to change based upon the completion date of the project.

C. **Repayment of Program Loan.** CONTRACTOR shall be obligated to pay CITY the total amount so advanced by the CITY under the Economic Development Program Loan in annual installments of THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) plus Accrued Interest (as defined below) for a term of SIX (6) years beginning on JANUARY 30, 2019 in accordance with the following schedule:

#### **SCHEDULE OF REPAYMENT\***

JANUARY 30, 2019	\$300,000.00 plus interest
JANUARY 30, 2020	\$300,000.00 plus interest
JANUARY 30, 2021	\$300,000.00 plus interest
JANUARY 30, 2022	\$300,000.00 plus interest
JANUARY 30, 2023	\$300,000.00 plus interest
JANUARY 30, 2024	\$300,000.00 plus interest

\*This Schedule of Repayment is not subject to change.

D. **Payment of Principal and Accrued Interest.** In addition to the principal amount of the Economic Development Program Loan specified in SECTION 3(B) above, CONTRACTOR shall also pay interest on the outstanding amount advanced under the Economic Development Program Loan beginning on January 1, 2019 ("Accrued Interest"). Interest on the outstanding loan amount shall be calculated commencing January 1, 2019 at a fixed-rate equal to the CITY's average annual yield calculated for the CITY's four quarterly investment reporting periods ending December 31, 2017, March 31, 2018, June 30, 2018 and September 30, 2018 (or last four quarterly investment reporting periods if changed from December 31, March 31, June 30 and September 30). Such fixed interest rate shall be in effect beginning January 1, 2019. In no event shall any interest, including the Accrued Interest, accrue on the outstanding balance of the Economic Development Program Loan prior to January 1, 2019. The amount of the Accrued Interest payment each year shall be referred to as an "Interest Payment")

E. **Sufficient Amounts.** Each payment made pursuant to SECTION 3(B) and 3(C) above shall be sufficient to pay the total amount of principal and Accrued Interest on the Economic Development Program Loan becoming due and payable upon that date.

F. **Unconditional Obligation to Repay the Program Loan.** The obligations of CONTRACTOR to make the Loan Payments and Interest Payments required by SECTION 3(B) and 3(C) above are absolute and unconditional, irrespective of any defense or any rights of set-off, re-coupment or counterclaim it might otherwise have against the CITY, and during the term of this Agreement, CONTRACTOR shall pay all payments required to be made on account of this Agreement (which payments shall be net of any other obligations of CONTRACTOR) as prescribed in SECTION 3(B) and 3(C) free of any deductions and without abatement, diminution or set-off. Until such time as the principal of and interest on the Economic Development Program Loan shall have been fully paid or provision for the payment thereof shall have been made.

G. **Prepayment.** Should CONTRACTOR repay the amount of the Economic Development Program Loan in whole, or in part, prior to the scheduled payment dates or the expiration of the dates specified in Section 3(B) of this Agreement, no penalty for such payment shall be applied.



#### **SECTION 4. LOAN DEFAULT AND CITY's REMEDIES**

A. **Loan Default Events.** Any one of the following which occurs and continues shall constitute a Loan Default Event:

1. Failure of CONTRACTOR to make any Loan Payment required by SECTION (3)B and 3(C) when due; and/or
2. Failure of CONTRACTOR to observe and perform in any material respect any covenant, condition or agreement on its part required to be observed or performed under Attachment I, Attachment II, or this Agreement following the expiration of thirty (30) days written notice to cure; and/or
3. The dissolution or liquidation of CONTRACTOR or the filing by CONTRACTOR of a voluntary petition in bankruptcy, or failure by CONTRACTOR to promptly cause to be lifted any execution, garnishment or attachment of such consequence as will impair CONTRACTOR's ability to carry on its obligations under this Agreement, Attachment I and/or Attachment II; and/or
4. The commission by CONTRACTOR of any act of voluntary or involuntary bankruptcy under any state or federal law; and/or
5. The admittance of CONTRACTOR, in writing, of its inability to pay its debts generally as they become due, or a receiver, trustee or liquidator of CONTRACTOR shall be appointed in any proceeding brought against CONTRACTOR and shall not be discharged within ninety (90) days after such appointment.

B. **Remedies to CITY upon a Loan Default Event.** Should CONTRACTOR cause or allow a Loan Default Event to occur and it shall be continuing:

1. CITY, by written notice to CONTRACTOR, shall declare the unpaid balance of the Economic Development Program Loan payable under SECTION 3(B) and 3(C) of this Agreement, and due immediately; and
2. CITY shall have access to and may inspect, examine and make copies of the books and records and any and all accounts, data and federal income tax and other tax returns of CONTRACTOR; and
3. CITY may take whatever action at law or in equity as may be necessary or desirable to collect the payments and other amounts then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of CONTRACTOR under this Agreement.

C. **Attorneys' Fees and Expenses.** In the event CONTRACTOR should default under any of the provisions of this Agreement and the CITY should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of CONTRACTOR herein contained, CONTRACTOR agrees to pay to the CITY reasonable fees of such attorneys and such other expenses so incurred by the CITY.

D. **No Remedy Exclusive.** No remedy herein conferred upon or reserved to the CITY is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative

and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY HERETO BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR OTHERWISE) UNDER OR IN RESPECT OF THIS AGREEMENT.

## **SECTION 5. AGREEMENT PERIOD**

This Agreement shall commence upon its execution and shall only terminate upon full and final payment from CONTRACTOR on or before JANUARY 30, 2024.

## **SECTION 6. DEPARTMENT OBLIGATIONS**

A. In consideration of full and satisfactory performance of activities required by Section 2 of this Agreement, CITY will make an Economic Development Loan in an amount not to exceed ONE MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$1,800,000.00) as described in Section 3(A) to CONTRACTOR in the amounts and at the times specified by Section 3(A) of this Agreement, and subject to the conditions and limitations set forth in this Agreement.

B. CITY will not be liable to CONTRACTOR or other entity for any costs incurred by CONTRACTOR.

## **SECTION 7. RETENTION AND ACCESSIBILITY OF RECORDS**

A. CONTRACTOR shall maintain the fiscal records and supporting documentation for expenditures of funds associated with this Agreement. CONTRACTOR shall retain such records, and any supporting documentation, for the greater of: (1) Five [5] years from the end of the Agreement period; or (2) the period required by other applicable laws and regulations.

B. CONTRACTOR shall following reasonable advance written notice from the CITY, give the CITY, its designee, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, audit reports, reports, files, documents, written or photographic material, videotape and other papers, things, or property belonging to or in use by CONTRACTOR pertaining to the Economic Development Loan (the "Records"). The CITY's access to CONTRACTOR's books and records will be limited to information needed to verify that CONTRACTOR is and has been complying with the terms of this Agreement and to verify advances made by the City and re-payments made by CONTRACTOR and to verify that the proceeds of the Economic Development Loan are or were used in connection with the development and operation the Project. Any information that is not required by law to be made public shall be kept confidential by CITY. CONTRACTOR shall not be required to disclose to the CITY any information that by law CONTRACTOR is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, the CITY reserves the right to require CONTRACTOR to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of CONTRACTOR. The rights to access the Records shall continue as long as the Records are retained by CONTRACTOR. Failure to provide reasonable access to the Records to authorized CITY representatives shall give the CITY the right to suspend or terminate this Agreement as provided for in Section 15 and 16 below, or any portion thereof, for reason of default. All Records shall be retained by CONTRACTOR for a period of five (5) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters including, but not limited to, investigations, lawsuits, administrative inquiries and open record requests are completed. CONTRACTOR agrees to maintain the Records in an accessible location and to provide citizens reasonable access to the Records consistent with the Texas Public

Information Act on the same terms as the Records are made available to the CITY as set forth above. All of the above notwithstanding, the CITY and the citizens shall have no right to access any confidential or proprietary records of CONTRACTOR, including but not limited to the ownership and capital structure of CONTRACTOR.

## **SECTION 8. MONITORING**

A. CITY reserves the right to confirm CONTRACTOR's compliance with the terms and conditions of this Agreement. CITY will provide CONTRACTOR with a written report of the monitor's findings. If the monitoring report notes deficiencies in CONTRACTOR's performances under the terms of this Agreement, the monitoring report shall include a listing of requirements for the correction of such deficiencies by CONTRACTOR and a reasonable amount of time in which to attain compliance. Failure by CONTRACTOR to take action specified in the monitoring report may be cause for suspension or termination of this Agreement, in accordance with Sections 15 and 16 herein.

B. CONTRACTOR shall provide to CITY a statement with reasonable supporting information evidencing the creation of and filling of the number of jobs required by this Agreement.

## **SECTION 9. RESERVED.**

## **SECTION 10. CONFLICT OF INTEREST**

A. CONTRACTOR shall use reasonable business efforts to ensure that no employee, officer, or individual agent of CONTRACTOR shall participate in the selection, award or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or individual agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract and the relationship calls for payments to be made to such subcontractor on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. CONTRACTOR shall comply with Chapter 171, Texas Local Government Code as well as the CITY's Code of Ethics.

## **SECTION 11. NONDISCRIMINATION AND SECTARIAN ACTIVITY**

A. CONTRACTOR shall ensure that no person shall, on the ground of race, color, national origin, religion, sex, age or handicap, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part with funds made available under this Agreement.

B. None of the performances rendered by CONTRACTOR under this Agreement shall involve, and no portion of the funds received by CONTRACTOR under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.

C. CONTRACTOR shall include the substance of this Section 11 in all agreements associated with the funds made available through this Agreement.

## **SECTION 12. LEGAL AUTHORITY**

A. Each party assures and guarantees to the other that they possesses the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.

B. The person or persons signing and executing this Agreement on behalf of each party or representing themselves as signing and executing this Agreement on behalf of a party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.

C. CITY will have the right to suspend or terminate this Agreement in accordance with Sections 15 and 16 herein if there is a dispute as to the legal authority, of either CONTRACTOR or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder. CONTRACTOR is liable to CITY for any money it has received from CITY for performance of the provisions of this Agreement if CITY suspends or terminates this Agreement for reasons enumerated in this Section 12.

## **SECTION 13. LITIGATION AND CLAIMS**

A. CONTRACTOR shall give CITY immediate notice in writing of any action, including any proceeding before an administrative agency, filed against CONTRACTOR arising out the performance of any subcontract hereunder. Except as otherwise directed by CITY, CONTRACTOR shall furnish immediately to CITY copies of all pertinent papers received by CONTRACTOR with respect to such action or claim. CONTRACTOR shall notify the CITY immediately of any legal action filed against the CONTRACTOR or any subcontractor, or of any proceeding filed under the federal bankruptcy code. CONTRACTOR shall submit a copy of such notice to CITY within 30 calendar days after receipt. No funds provided under this Agreement may be used in the payment of any costs incurred from violations or settlements of, or failure to comply with, federal and state regulations. The above notwithstanding CONTRACTOR is not required to notify CITY of claim litigation which arise out of CONTRACTOR's operations on the Project, including without limitation, landlord tenant disputes, personal injury actions (slip and falls), and other operational activities or relationships.

B. CITY and CONTRACTOR acknowledge that CITY is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et. seq., and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.

C. This Agreement shall be interpreted according to the Constitution and the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

## **SECTION 14. CHANGES AND AMENDMENTS**

A. Except as provided in Section 14(C) below, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by both parties to this Agreement upon CITY approval and authorization of CONTRACTOR.

B. It is understood and agreed by the parties hereto that performances under this Agreement shall be rendered in accordance with the laws and rules governing the Economic Development Program as set forth in Texas Local Government Code Chapter 380, and the terms and conditions of this Agreement.

C. Any alterations, additions, or deletions to the terms of this Agreement required by changes in state law or regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation.

## **SECTION 15. SUSPENSION**

A. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code, in the event CONTRACTOR fails to comply with the terms of any agreement with the CITY, including those in Attachment I, Attachment II and this Agreement, CITY shall provide CONTRACTOR with written notification as to the nature of the non-compliance. CITY shall grant CONTRACTOR a sixty (60) day period from the date of the CITY's written notification to cure any issue of non-compliance under such agreement. Should CONTRACTOR fail to cure any default within this period of time, the CITY may, upon written Notice of Suspension to CONTRACTOR, suspend this Agreement in whole or in part and withhold further payments to CONTRACTOR or accelerate the due date of the repayment of the loan, and prohibit CONTRACTOR from incurring additional obligations of funds under this Agreement. Such Notice of Suspension shall include: (1) the reasons for such suspension; (2) the effective date of such suspension; and, (3) in the case of partial suspension, the portion of the Agreement to be suspended.

B. In the case of default for causes beyond CONTRACTOR's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, the CITY may, in its sole discretion, extend the cure period provided that CONTRACTOR shall: (1) immediately upon receipt of Notice of Suspension advise CITY of CONTRACTOR's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

C. A suspension under this Section 15 may be lifted only at the sole discretion of the CITY upon a showing of compliance with or written waiver by CITY of the term(s) in question.

D. With the exception of payment for work in progress or materials ordered prior to receiving a Notice of Suspension, CITY shall not be liable to CONTRACTOR or to CONTRACTOR's creditors for costs incurred during any term of suspension of this Agreement.

## **SECTION 16. TERMINATION**

A. CITY shall have the right to terminate this Agreement for non-compliance, in whole or in part, at any time before the date of completion specified in Section 5 of this Agreement whenever CITY determines that CONTRACTOR has failed to comply with any term of any Agreement with the CITY. CITY will provide CONTRACTOR with written notification as to the nature of the non-compliance, and grant CONTRACTOR a sixty (60) day period from the date of the CITY's written notification to cure any issue of non-compliance under such Agreement. Should CONTRACTOR fail to cure any default within this period of time, the CITY may as its sole and exclusive remedies, upon issuance to CONTRACTOR of a written Notice of Termination, terminate this Agreement in whole or in part and either: (1) withhold further payments to CONTRACTOR; or (2) accelerate the repayment of the loan. Such notification shall include: (1) the reasons for such termination; (2) the effective date of such termination; and, (3) in the case of partial termination, the portion of the Agreement to be terminated.

B. In the case of default for causes beyond CONTRACTOR's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, the CITY may, in its sole discretion, extend the cure period provided that CONTRACTOR shall: (1) immediately upon receipt of Notice of Termination advise CITY of CONTRACTOR's intention to institute all steps necessary to cure such default and the

associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

C. Except as provided in Section 16(A), the Economic Development Program Loan may be terminated in whole or in part only as follows:

1. By the CITY (with the consent of the CONTRACTOR) in which case the two parties shall agree upon the termination conditions, including the repayment of funds, the effective date and in the case of partial termination, the portion to be terminated; or
2. By the CONTRACTOR upon written notification to the CITY, setting forth the reasons of such termination, a proposed pay-back plan of any funds loaned, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of partial termination, the CITY determines in its sole discretion that the remaining portion of the award will not accomplish the purpose for which the award was made, the CITY may terminate the award in its entirety under Section 16(A).

D. Notwithstanding any exercise by CITY of its right of suspension under Section 15 of this Agreement, or of early termination pursuant to this Section 16, CONTRACTOR shall not be relieved of repayment of loaned funds under this Agreement or any liability to CITY for actual damages due to CITY by virtue of any breach by CONTRACTOR of any agreement with CITY, including Attachment I, Attachment II and this Agreement.

#### **SECTION 17. SPECIAL CONDITIONS AND TERMS (RESERVED)**

#### **SECTION 18. SUBAGREEMENTS**

A. CONTRACTOR shall use reasonable business efforts to ensure that the performance rendered under all subcontracts complies with all terms and provisions of this Agreement as if such performance were rendered by CONTRACTOR.

B. CONTRACTOR, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, CITY is in no way liable to CONTRACTOR's subcontractor(s).

C. CONTRACTOR assures and shall obtain assurances from all of its subcontractors where applicable, that no person shall, on the grounds of race, creed, color, disability, national origin, sex or religion, be excluded from, be denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part under this Agreement.

D. As subcontracts and supplier agreements become necessary to carry out the requirements of this Agreement, CONTRACTOR covenants to comply with the CITY's SBEDA Program, currently identified under Ordinance No. 100873, and as amended.

#### **SECTION. 19. DEBARMENT**

By signing this Agreement, CONTRACTOR certifies that it will not award any funds provided under this Agreement to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs by the CITY.

## **SECTION 20. RIGHTS UPON DEFAULT**

It is expressly understood and agreed by the Parties hereto that any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under any other agreements between CONTRACTOR and the CITY or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

## **SECTION 21. NON-ASSIGNMENT**

This Agreement is not assignable without the written consent of CITY and the passage of a City Ordinance approving such assignment. Any other attempt to assign the Agreement shall not relieve CONTRACTOR from liability under this Agreement and shall not release CONTRACTOR from performing any of the terms, covenants and conditions herein. CONTRACTOR shall be held responsible for all funds received under this Agreement.

## **SECTION 22. ORAL AND WRITTEN AGREEMENTS**

All oral and written agreements between the Parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

## **SECTION 23. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)**

CITY may grant temporary relief from performance of this Agreement if the CONTRACTOR is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributed to the fault or negligence of the CONTRACTOR. The burden of proof for the need for such relief shall rest upon the CONTRACTOR. To obtain release based upon *force majeure*, the CONTRACTOR must file a written request with the CITY. Should CITY grant temporary relief to CONTRACTOR, it shall in no case relieve CONTRACTOR from any repayment obligations as specified in Section 3(B) and 3(C) of this Agreement.

*Signatures appear on next page.*

WITNESS OUR HANDS, EFFECTIVE as of \_\_\_\_\_, 200\_\_:

Accepted and executed in two duplicate originals on behalf of the CITY of San Antonio pursuant to Ordinance Number 3006-1434, dated December 14, 2006, and Vistana L.T.D. pursuant to the authority of its General Partner.

**VISTANA LTD.**

a Texas Limited Partnership

By: Vistana Management, LLC

Its: General Partner

By:

Edward A. Cross  
Edward A. Cross, Manager

**CITY OF SAN ANTONIO,**

a Texas Municipal Corporation

Sheryl L. Sculley  
CITY MANAGER

ATTEST:

Name:

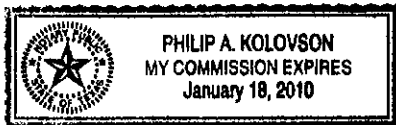
Title:

NUTANS

ATTEST:

Leticia Vacek

CITY CLERK



APPROVED AS TO FORM:

Michael D. Bernard  
CITY ATTORNEY

ATTACHMENTS:

- Attachment I Contractor's Tax Abatement Application
- Attachment II Contractor's Tax Abatement Agreement
- Attachment III Contractor's Incentive Scorecard Agreement



**FIRST AMENDMENT TO THE ECONOMIC DEVELOPMENT LOAN  
AGREEMENT**

**BETWEEN THE CITY OF SAN ANTONIO AND VISTANA LTD.**

This FIRST AMENDMENT to the ECONOMIC DEVELOPMENT LOAN AGREEMENT (this "FIRST AMENDMENT") is entered into by and between the CITY OF SAN ANTONIO ("City") and VISTANA, LTD. ("DEVELOPER") together referred to as "the Parties."

**RECITALS**

- A. City and DEVELOPER are parties to that certain ECONOMIC DEVELOPMENT LOAN AGREEMENT (the "Agreement") authorized by City of San Antonio Ordinance No. 2006-12-14-1424, passed and approved on December 14, 2006.
- B. Prior to the effectiveness of this FIRST AMENDMENT, the AGREEMENT provided for certain deadlines, as described below, to complete the Project.
- D. City and DEVELOPER desire to amend the AGREEMENT in accordance with the terms and conditions of this FIRST AMENDMENT.
- E. All other provisions of the AGREEMENT shall remain in full force and effect.

**RENEWAL**

NOW THEREFORE, the Parties hereby agree and amend as follows:

1. Definitions. All capitalized terms used in this FIRST AMENDMENT without definition herein shall have the meanings assigned to such terms in the AGREEMENT.

2. Amendment. The Parties hereby agree to amend the AGREEMENT as follows:

- (A) Section 2(C) is hereby amended by deleting the first sentence in its entirety and replacing with the following:

"CONTRACTOR shall complete the Project no later than April 30, 2009."

- (B) Section 3 (B), is hereby deleted in its entirety and replaced with the following:

**Loan Disbursement.** City shall make available to CONTRACTOR an Economic Development Program Loan in the total amount of ONE MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$1,800,000.00), which shall be disbursed to CONTRACTOR in six annual payments of THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) each,

commencing on the thirtieth (30<sup>th</sup>) day after presentation to the City of a final Certificate of Occupancy for the Project. A temporary Certificate of Occupancy shall not commit the City to disburse any funds. Subsequent annual payments will be made on the anniversary date (day and month) of the first payment in years 2010 through 2014.

3. Effective Date. This FIRST AMENDMENT shall be effective upon passage of a duly authorized ordinance of the City Council of the City of San Antonio which shall be attached hereto and made a part of this FIRST AMENDMENT.

4. No Other Changes. Except as specifically set forth in this FIRST AMENDMENT, all of the terms and conditions of the AGREEMENT shall remain the same and are hereby ratified and confirmed. The AGREEMENT shall continue in full force and effect and with this FIRST AMENDMENT shall be read and construed as one instrument.

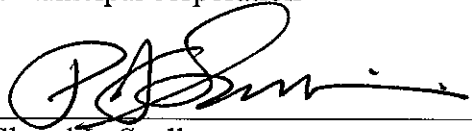
5. Choice of Law. This FIRST AMENDMENT shall be construed in accordance with and governed by the laws of the State of Texas.

6. Counterparts. This FIRST AMENDMENT may be executed in any number of counterparts, but all such counterparts shall together constitute but one instrument. In making proof of this FIRST AMENDMENT it shall not be necessary to produce or account for more than one counterpart signed by each party hereto by and against which enforcement hereof is sought.


*Signatures appear on next page.*

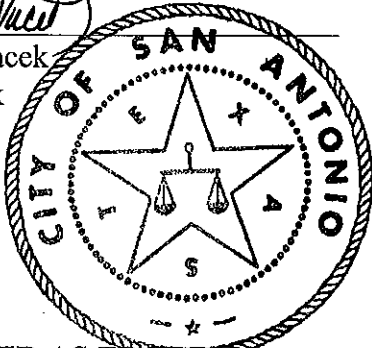
WITNESS HEREOF, the parties hereto have executed in duplicate originals this FIRST AMENDMENT on the \_\_\_\_\_ day of \_\_\_\_\_ 2008.

**CITY OF SAN ANTONIO**  
a municipal corporation

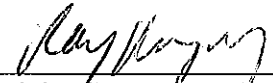
  
For Sheryl L. Sculley  
City Manager

ATTEST:

  
Leticia Vacek  
City Clerk




APPROVED AS TO FORM:


  
For Michael D. Bernard  
City Attorney

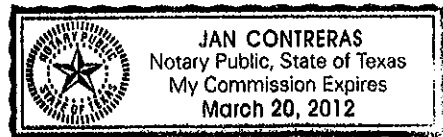
**VISTANA, LTD.,**  
a Texas limited partnership

By: Vistana Management, LLC,  
a Texas limited liability company,  
its General Partner

  
Name: Edward A. Cross  
Title: Manager

ATTEST:

  
Name: Jan Contreras  
Title: Notary Public



AN ORDINANCE 2008-12-04-1105

**AUTHORIZING AMENDMENTS TO THE TAX PHASE-IN  
AGREEMENT AND CHAPTER 380 ECONOMIC DEVELOPMENT  
LOAN AGREEMENT WITH VISTANA LTD TO EXTEND THE  
DATE REQUIRED TO COMPLETE CONSTRUCTION OF THE  
VISTANA PROJECT TO APRIL 30, 2009.**

\* \* \* \* \*

**WHEREAS**, on August 17, 2006, City Council approved a Tax Phase-In Agreement with Vistana LTD (the "Developer") for the construction of a \$38 million mixed-use, market rate rental housing development located in downtown San Antonio that consists of nine floors of rental apartments, four floors of above ground parking including spaces available for public use and 30,000 square feet of retail space that will include a coffee shop, pharmacy, dry cleaner, restaurant and florist; and

**WHEREAS**, on December 14, 2006, City Council approved a Chapter 380 Economic Development Program Loan Agreement with the Developer in the amount of \$1.8 million to assist with electrical infrastructure costs required to support this downtown project; and

**WHEREAS**, both the Tax Phase-In Agreement and Chapter 380 Loan Agreement (the "Agreements") required the Developer to complete the project by January 1, 2009; and

**WHEREAS**, due to construction delays caused by weather and other unforeseen circumstances, the Developer has requested amendments to the Agreements to reflect that the project will be completed by April 30, 2009; and

**WHEREAS**, the abatement period for the project under the Tax Phase-In Agreement has not yet commenced and no payments under the Chapter 380 Loan Agreement are due until substantial completion of the project; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The terms and conditions of the First Amendments to the Tax Phase-In Agreement and the First Amendment to the Chapter 380 Economic Development Loan Agreement are hereby approved.

**SECTION 2.** The City Manager or her designee is authorized to execute a First Amendment to the Tax Phase-In Agreement and Chapter 380 Economic Development Loan Agreement with Vistana LTD in accordance with the terms and conditions of this ordinance. A copy of the amendments, in substantially final form, are attached to this ordinance as Exhibit "A" and Exhibit "B." The final amendments shall be filed with this ordinance upon execution.

**SECTION 3.** The amount of \$300,000.00 is appropriated for this ordinance in Fund No. 20590000, entitled "Economic Development Initiatives," Cost Center No. 1604010001 entitled "Economic Development Initiatives," General Ledger No. 5201040, entitled "Fees to Professional Contractors." The Fiscal Year 2009 budget is amended to reflect this change.

**SECTION 4.** Payment not to exceed \$300,000.00 is authorized to Vistana Ltd. in accordance with the terms and conditions of the Chapter 380 Loan Agreement and shall be encumbered upon the submission of a purchase order.

**SECTION 5.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

**SECTION 6.** This ordinance shall be effective on and after the tenth day after passage.

PASSED AND APPROVED this 4<sup>th</sup> day of DECEMBER 2008.

  
M A Y O R

ATTEST:

  
City Clerk

APPROVED AS TO FORM: \_\_\_\_\_

  
for City Attorney